

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

RH-TP-07-29,064

In re: 1315 Peabody Street, NW, Unit 2A

Ward Four (4)

AHMED, INC
Housing Provider/Appellant

v.

JOSE OSMIN TORRES & LORENA LEIVA
Tenants/Appellees

**ORDER ON HOUSING PROVIDER'S MOTION TO
AMEND NOTICE OF APPEAL**

April 15, 2014

SZEGEDY-MASZAK, CHAIRMAN. This case is on appeal to the Rental Housing Commission (Commission) from a Final Order issued by the Office of Administrative Hearings (OAH),¹ based on a petition filed in the Rental Accommodations Division (RAD) of the District of Columbia Department of Housing and Community Development (DHCD). The applicable provisions of the Rental Housing Act of 1985 (Act), D.C. LAW 6-10, D.C. OFFICIAL CODE §§ 42-3501.01-3509.07 (2001), the District of Columbia Administrative Procedure Act (DCAPA), D.C. OFFICIAL CODE §§ 2-501 – 510 (2001 Supp. 2008), and the District of Columbia Municipal Regulations (DCMR), 1 DCMR §§ 2800-2899, 1 DCMR §§ 2920-2941, 14 DCMR §§ 3800-4399 (2004) govern these proceedings.

¹ The Office of Administrative Hearings (OAH) assumed jurisdiction over tenant petitions from the Rental Accommodations and Conversion Division (RACD) of the Department of Consumer and Regulatory Affairs (DCRA) pursuant to the OAH Establishment Act, D.C. OFFICIAL CODE § 2-1831.01, -1831.03(b-1)(1) (2001 Supp. 2005). The functions and duties of RACD were transferred to DHCD by the Fiscal Year Budget Support Act of 2007, D.C. Law 17-20, 54 DCR 7052 (September 18, 2007) (codified at D.C. OFFICIAL CODE § 42-3502.03a (2001 Supp. 2008)).

I. PROCEDURAL HISTORY

On September 13, 2007, Tenants/Appellees Jose Osmin Torres and Lorena Leiva (Tenants), residents of 1315 Peabody St., NW, Unit 2A (Housing Accommodation) filed Tenant Petition RH-TP-07-29,064 (Tenant Petition) with DCRA against Housing Provider/Appellant Ahmed, Inc. (Housing Provider). *See* Tenant Petition at 1; Record for RH-TP-07-29,064 (R.) at 25. Administrative Law Judge (ALJ) Claudia Barber issued a Final Order on February 19, 2010, Torres v. Ahmed, Inc., RH-TP-07-29,064 (OAH Feb. 19, 2010) at 1; R. at 208.

On March 4, 2010, the Housing Provider filed a Notice of Appeal with the Commission. Notice of Appeal at 1. The Tenants filed a Motion for Reconsideration with the ALJ on March 8, 2010, and the ALJ issued an Order Granting Reconsideration, an Amended Final Order, and an Order Granting Motion for Attorney's Fees on April 15, 2010. *See* Order Granting Reconsideration at 1; Amended Final Order at 1; Order Granting Motion for Attorney's Fees at 1; R. at 301, 305, 316. On April 28, 2010, the Housing Provider filed a Second Notice of Appeal with the Commission, from the ALJ's Amended Final Order.

On February 9, 2011, the Housing Provider filed a Motion for Leave to Amend Notice of Appeal (Motion to Amend Notice of Appeal). *See* Motion to Amend Notice of Appeal at 1. The Tenants filed a "Motion for Leave to File Response Out of Time" (Motion for Leave to File Response) on March 7, 2011, seeking to file an Opposition to the Motion to Amend past the deadline for filing oppositions dictated by 14 DCMR § 3814.3 (2004). *See* Motion for Leave to File Response at 1-2.

II. DISCUSSION OF THE MOTION TO AMEND NOTICE OF APPEAL

In its Motion to Amend Notice of Appeal, the Housing Provider explains that it seeks to amend the Notice of Appeal to include the ALJ's determination in the Amended Final Order that

the Tenants are entitled to a rent refund, and to include the ALJ's Order Granting Tenants' Attorney's Fees. *See* Motion to Amend Notice of Appeal at 1-2.

The Commission notes that its regulations provide the following regarding the time period for filing a notice of appeal:

3802.2 A notice of appeal shall be filed by the aggrieved party within ten (10) days after a final decision of the Rent Administrator [or ALJ] is issued; and, if the decision is served on the parties by mail, an additional three (3) days shall be allowed.

3816.3 When the time period described or allowed is ten (10) days or less, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.

3816.6 The Commission, for good cause shown, may enlarge the time period prescribed, either on motion by a party or on its own initiative; *provided, that the Commission does not enlarge the time for filing a notice of appeal.*

14 DCMR §§ 3802.2, 3816.3, 3816.6 (2004) (emphasis added). The Commission has consistently held that, under the Act, time limits are mandatory and jurisdictional. *See, e.g. Dorchester House, Assocs., LLC v. Tenants of 2480 16th St., NW*, RH-SF-09-20,098 (RHC Sept. 6, 2013) (dismissing a notice of appeal that was filed after the expiration of the ten day period under 14 DCMR § 3802.2 (2004)); *Barnes-Mosaid v. Zalco Realty, Inc.*, RH-TP-08-29,316 (RHC Sept. 28, 2012) (denying motion for reconsideration that was untimely filed); *Haendel v. Budd*, TP 27,598 (RHC May 21, 2007) (dismissing appeal that was untimely filed).

Additionally, the Commission's precedent demonstrates that any amendments to a notice of appeal must be filed within the ten (10) day period prescribed by § 3816.3. *See, e.g. Shipe v. Carter*, RH-TP-08-29,411 (RHC Sept. 18, 2012) (stating that the Commission had no jurisdiction over an amended notice of appeal that was filed more than ten (10) days after the final order); *Grant v. Gelman Mgmt. Co.*, TPs 27,995, 27,997, 27,998, 28,002, 28,004 (RHC Aug. 31, 2004) (observing that the Commission does not have the power to allow amendments to the notice of

appeal after the appeal period has expired because time limits for filing an appeal under the Act are jurisdictional and the Act does not authorize the Commission to extend time for amendments after the appeal period has expired); Assalaam v. Lipinski, TP 24,726 (RHC Apr. 18, 2000) (denying Tenant's motion to amend notice of appeal to add new issues because the 10-day appeal period under the Act had expired). Therefore, based upon its interpretation of relevant provisions of the Act and applicable case law, the Commission is satisfied that it lacks legal authority to allow amendments to the notice of appeal for additional issues after the statutory period for filing the notice of appeal has expired, since filing time limits for an appeal to the Commission are jurisdictional, and the Act does not permit any extension of time for filing such amendments. See Shipe, RH-TP-08-29,411; Grant, TPs 27,995, 27,997, 27,998, 28,002, 28,004; Assalaam, TP 24,726.²

The Commission observes that, in this case, the ALJ's Amended Final Order was issued on April 15, 2010. See Amended Final Order at 1; R. at 301. The Amended Final Order indicates that it was served on the Housing Provider, through counsel, by first-class mail. See *id.* at 31; R. at 271. Accordingly, the Commission determines that the Housing Provider had thirteen (13) days from the time the Amended Final Order was issued to file a Notice of Appeal, a time period that expired on May 4, 2010, approximately nine (9) months prior to the filing of the Motion to Amend Notice of Appeal. 14 DCMR §§ 3802.2, 3816.1-3, 3816.6 (2004).³

² As noted, except for the time period for filing a notice of appeal, the Commission may for good cause shown enlarge other time periods. See 14 DCMR § 3816.6. See *supra* at 3.

³ 14 DCMR § 3816.1 (2004) provides the following: "[i]n computing any period of time prescribed or allowed under this chapter, the day of the act, event, or default from which the designated time period begins to run shall not be included."

14 DCMR § 3816.2 provides the following: "[t]he last day of the period so computed shall be included, unless it is a Saturday, Sunday or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday or a legal holiday."

Therefore, because time limits for filing amendments to notices of appeal are mandatory and jurisdictional, the Commission denies the Housing Provider's Motion to Amend Notice of Appeal. 14 DCMR § 3802.2 (2004); Dorchester House, Assocs., LLC, RH-SF-09-20,098; Barnes-Mosaid, RH-TP-08-29,316; Shipe, RH-TP-08-29,411; Grant, TPs 27,995, 27,997, 27,998, 28,002, 28,004; Assalaam, TP 24,726.

III. CONCLUSION

Based on the foregoing, the Commission denies the Motion to Amend Notice of Appeal.

SO ORDERED


PETER B. SZEGEDY-MASZAK, CHAIRMAN

MOTIONS FOR RECONSIDERATION

Pursuant to 14 DCMR § 3823 (2004), final decisions of the Commission are subject to reconsideration or modification. The Commission's rule, 14 DCMR § 3823.1 (2004), provides, "[a]ny party adversely affected by a decision of the Commission issued to dispose of the appeal may file a motion for reconsideration or modification with the Commission within ten (10) days of receipt of the decision."

JUDICIAL REVIEW

Pursuant to DC OFFICIAL CODE § 42-3502.19 (2001), "[a]ny person aggrieved by a decision of the Rental Housing Commission. . . may seek judicial review of the decision . . . by filing a petition for review in the District of Columbia Court of Appeals. Petitions for review of the Commission's decisions are filed in the District of Columbia Court of Appeals and are governed by Title III of the Rules of the District of Columbia Court of Appeals. The court may be contacted at the following address and telephone number:

D.C. Court of Appeals
Office of the Clerk
430 E. Street, N.W.
Washington, D.C. 20001
(202) 879-2700

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing **ORDER ON MOTION TO AMEND NOTICE OF APPEAL** in RH-TP-07-29,064 was mailed, postage prepaid, by first class U.S. mail on this - **15th day of April, 2014** to:

Edward Allen
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A handwritten signature in black ink, appearing to read 'LaTonya Miles', written over a horizontal line.

LaTonya Miles
Clerk of the Court
(202) 442-8949